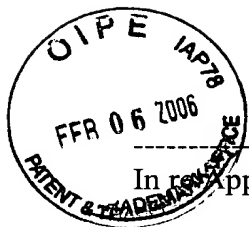


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[67190/993896]



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

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In re Application of: : Examiner: Victor D. Lesniewski
: :
Rainer BARTH : :
: :
For: INDUSTRIAL CONTROLLER : :
FOR MACHINE TOOLS AND/OR : :
PRODUCTION MACHINES : :
: :
Filed: September 19, 2000 : :
: Art Unit 2152
: :
Serial No.: 09/664,948 : :
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Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

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Date:

Signature:

Michelle Carniaux (Reg. No. 36,098)

APPEAL BRIEF PURSUANT TO 37 C.F.R. § 41.37

S I R:

In the above-identified patent application ("the present application"), the Appellant mailed a Notice of Appeal on October 27, 2005 from the Final Office Action issued by the United States Patent and Trademark Office on May 6, 2005. This Notice of Appeal was received by the Patent Office on October 31, 2005.

In the Final Office Action, claims 1 to 16 were finally rejected. An Advisory Action was mailed on November 14, 2005.

In accordance with 37 C.F.R. § 47.37, this Appeal Brief is submitted in triplicate in support of the appeal of the final rejection of claims 1 to 16. For the reasons more fully set forth below, the final rejection of claims 1 to 16 should be reversed.

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1. REAL PARTY IN INTEREST

The real party in interest in the present appeal is Siemens Aktiengesellschaft (“Siemens AG”), München, Federal Republic of Germany. Siemens AG is the assignee of the entire right, title, and interest in the above-identified application.

2. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences “which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.”

3. STATUS OF CLAIMS

Claims 1 and 4 to 16 stand finally rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,591,296 to Ghanime (“Ghanime”) in view of U.S. Patent No. 6,477,667 to Levi et al. (“Levi”).

Claims 2 and 3 stand finally rejected under 35 U.S.C. § 103(a) as being obvious over Ghanime in view of Levi and U.S. Patent No. 6,065,136 to Kuwabara (“Kuwabara”).

Appellant appeals from the final rejection of claims 1 to 16. A copy of the appealed claims is attached hereto in the Appendix.

4. STATUS OF AMENDMENTS

In response to the Final Office Action issued on May 6, 2005, an Amendment was filed on October 17, 2005. The Amendment did not include any amendments to the claims.

5. SUMMARY OF THE CLAIMED SUBJECT MATTER

Independent claims 1, 9, 11, 13 and 15 relate to an industrial controller for a machine tool, a robot and/or a production machine.

Fig. 1 shows in block diagram form, an exemplary embodiment of the claimed subject matter, in which to control a machine tool WZM, data is interchanged between an numeric controller NC, an interface controller PLC and the machine tool WZM via a bus system B1. The numeric controller NC includes a bus system B2 and a control panel BT, which has a keyboard T to input data and a display D to show the desired or actual operation of the machine tool WZM. Page 3, lines 27 to 37.

Included in the operating system of the numeric controller NC, for example, are two servers S1 and S2, which are allocated to the control panel BT. Here, server S1 knows

all NC variables and PLC variables and parameters, while server S2 is an alarm server accessible to a converter U via a bus system B3. Page 4, lines 1-12.

According to the present invention, the converter U allocates predefined operating states of the machine tool WZM on an individual basis such that, if any one of the operating states present is present, an SMS message and/or an email about the respective operating state is sent to a predefined distribution group. Page 2, lines 5-9. In this regard, the converter U uses a table function, which is stored therein, to define which alarm or which message is allocated. The table may include, for example:

1. a list of persons or sites to be informed,
2. relevant short information to be included as an e-mail and/or SMS message, and
3. further files, to be attached to the e-mail. Page 4. lines 15-22.

When this allocation has taken place, a bus system B4 is used to activate a transmission device SE (e.g., a modem) as an e-mail client, and the receivers, be they pure SMS receivers, which can process only 160 characters, or be they normal e-mail receivers EM1 and EM2, for example PCs, receive the sent information via a switching facility VE used as an e-mail server. Page 4, lines 24-30

Thus, when a particular predefined operating state arises, the SMS message and/or email about the respective operating state is sent to the predefined distribution group thereby ensuring an immediate response and an optimum correspondence to the respective alarm or to the respective message for the appropriate maintenance and operating personnel. Page 2, lines 1-3 and 30-35. Moreover, since e-mails can have files, particularly trace files, attached to them, an operating sequence, for example, immediately preceding the message or the alarm can be documented in detail and communicated to the proper person to be informed. Page 2, lines 11-15.

6. GROUND FOR REJECTION TO BE REVIEWED ON APPEAL

- A. Whether claims 1 and 4 to 16 are obvious over Ghanime in view of Levi.
- B. Whether claims 2 and 3 are obvious over Ghanime in view of Levi and Kuwabara.

7. ARGUMENTS

- A. **Claims 1 and 4 to 16 are not obvious over Ghanime in view of Levi**

Claims 1 and 4 to 16 stand rejected under 35 U.S.C. § 103(a) as being obvious over Ghanime in view of Levi. It is respectfully submitted that none of claims 1 and 4 to 16 is obvious over Ghanime in view of the Levi, for at least the following reasons.

Claim 1 recites:

An industrial controller for a machine tool, a robot and/or a production machine, ***comprising:***

a converter which associates predefined operating states, of the machine tool, robot and/or production machine, on an individual operating-state basis to respective messages and/or alarms so that, if one of the predefined operating states is present, an SMS message and/or an e-mail about the one of the predefined operating states is sent to a predefined distribution group; and

a table which associates each of the predefined operating states with: i) a respective distribution group to whom the SMS message and/or email message is to be sent, and ii) information identifying particular information to be included in the SMS message and/or email message,

wherein after one of the predefined operating states is detected, the respective message and/or alarm associated with the one of the predefined operating states is sent via the SMS message and/or e-mail to ***the respective distribution group associated with the detected predefined operating state***, the respective message and/or alarm including the particular information identified by the information associated with the detected predefined operating state.

The Final Office Action admits that the Ghanime reference fails to disclose Applicant's "table" recited in claim 1, and instead relies on Levi. In this regard, the Final Office Action asserts on page 2 that the claims do not preclude storing the table at a site separate from the device being monitored, and that such a site may include, for example, a controller located in the operations center disclosed by Levi. The Final Office Action further asserts that the numeric control NC shown in Figure 1 of the present application is separated from the servers S1 and S2 and thus represents an analogous operations center as described in Levi. Appellant respectfully disagrees since on page 3, line 32 through page 4, line 8, the Specification explicitly states that the control panel BT, and hence also the two servers S1 and S2, belong to or are part of the numeric control NC. Accordingly, those skilled in the art would recognize that the numeric control NC (as well as the interface controller PLC) are part of the machine tool/robot/production machine, and that the square indicated by WZM represents the regulation or mechanical components of the machine tool/robot/production machine. That is,

those skilled in the art would recognize that the numeric control NC is in no way comparable to the operations center in the cited reference Levi.

In this connection, Levi describes a remote monitoring system, in which several devices 30 are monitored by an operations center 12 via the Internet 34. See Figs. 1 and 6, and related text. As represented in Fig. 6 and stated in column 14, line 11 through column 15, line 38, if a particular device 30 reveals a fault, then an alarm is generated in the device 30 and is sent via the Internet 34 to an operations center 12. See Figure 1. That is, the alarm is always sent to the same operations center 12. Thus, the operations center 12 referred to by Levi is not comparable to the numeric control NC of the present application, or to any numeric control of a machine tool/robot/production machine, since the numeric control NC is provided for each instance of a machine tool, robot and/or production machine, whereas according to Levi only one operations center 12 is provided, which additionally requires a listening process 362 and a notification process 84 as well as an SQL database 60 to assign the alarm signal to a particular person 32 and to inform that person 32 by e-mail. Thus, in sharp contrast to claim 1 of the present application, any “table” that is disclosed by Levi must necessarily reside in the operations center 12 and not in the device 30 to be monitored. Consequently, the evaluation process to inform the person 32 likewise is performed remotely within the operations center 12 and not in the device 30 to be monitored. In accordance with the present invention, however, no operations center is required. Therefore, in view of where Levi’s asserted “table” is located (i.e., in a remote operations center), it would not be obvious in view of the Levi reference to include a table in an industrial controller for a machine tool/robot/production machine, as provided for in the context of claim 1. Indeed, Levi does not refer to machine tools, robots or other production machines, but instead, refers to a work station, a personal computer, a laptop, a soft drink dispensing machine, a network postage machine, a printer, a personal digital assistant, and a heating/ventilation/air conditioning (HVAC) system, which show no relation to machine tools, robots or production machines. See col. 2, line 62 to col.

It is also respectfully submitted that Levi does not disclose or suggest a table which associates individual operating states of a machine tool/robot/production machine with a distribution group, as required by claim 1. Indeed, nowhere in Levi is it discussed or suggested that different groups of persons are informed regarding the failed device 30, or that such person might receive different depths of information depending on their position. Instead, according to Levi, the same person(s) 32 would be notified if any fault occurs. Moreover, if Levi were to disclose a table that associates each of a number of predefined

operating states with a respective distribution group (which it does not), such a table would be inapplicable to Ghanime. For instance, in Ghanime sensors of a machine are monitored with the aid of an on-site monitoring system 102, and if one of the sensors detects a fault condition in the machine, the on-site monitoring system 102 generates an e-mail via an e-mail server 112 and sends this via the Internet 122 to a monitoring and diagnostic center 116. Here, Ghanime relies on the fact that the e-mail server assigns the sender address of the respective e-mail to the respective sensor such that the remote monitoring and diagnostic center is able to identify the machine or the sensor on the basis of the sender address. See column 3, line 41 through column 4, line 44. However, Ghanime requires that all e-mails be sent to the monitoring-diagnostic center 116 so that including a table that associates a number of predefined operating states with a respective distribution group would serve no useful purpose to the system of Ghanime.

As to obviousness, to reject a claim under 35 U.S.C. § 103, the prior art must describe or suggest each claim feature, and there must be a motivation or suggestion to modify or combine the features in the manner contemplated by the claim. (See Northern Telecom, Inc. v. Datapoint Corp., 908 F.2d 931, 934 (Fed. Cir. 1990), cert. denied, 111 S. Ct. 296 (1990); In re Bond, 910 F.2d 831, 834 (Fed. Cir. 1990)). This motivation or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). In this regard, it is respectfully submitted that the Office has not provided proper citations to support the alleged motivation or suggestion to combine the prior art references. For example, the Final Office arbitrarily asserts on page 5 to 6 that “a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Ghanime by employing the use of a table to associate messages and multiple addresses with a machine fault [because] [t]his benefits the system by allowing multiple users to be alerted to a single problem to bring a faster resolution [and ...] allows for fast and reliable updating without a significant amount of administrative work”, but such assertions are clearly speculative suggestions on the part of the Examiner alone with no supportive basis in the references cited.

Moreover, the “problem confronted by the inventor must be considered in determining whether it would have been obvious to combine the references in order to solve the problem.” (See Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 679 (Fed. Cir. 1998)). It is respectfully submitted that, as discussed above, the references relied on, whether taken alone or combined, do not suggest in any way modifying or combining the

references so as to provide the presently claimed subject matter for addressing the problems and/or providing the benefits of the claimed subject matter, including, for example, a table which associates predefined operating states of on an individual basis to respective messages and/or alarms, and with a respective distribution group to whom an SMS message and/or email is to be sent, as explained herein and in the specification.

More recently, the Federal Circuit in the case of In re Kotzab has made plain that even if a claim concerns a “technologically simple concept” — which is not even the case here, there still must be some finding as to the “specific understanding or principle within the knowledge of a skilled artisan” that would motivate a person having no knowledge of the claimed subject matter to “make the combination in the manner claimed”, stating that:

In this case, the Examiner and the Board fell into the hindsight trap. The idea of a single sensor controlling multiple valves, as opposed to multiple sensors controlling multiple valves, is a technologically simple concept. *With this simple concept in mind, the Patent and Trademark Office found prior art statements that in the abstract appeared to suggest the claimed limitation. But, there was no finding as to the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of Kotzab's invention to make the combination in the manner claimed.* In light of our holding of the absence of a motivation to combine the teachings in Evans, we conclude that the Board did not make out a proper *prima facie* case of obviousness in rejecting [the] claims . . . under 35 U.S.C. Section 103(a) over Evans.

(See In re Kotzab, 55 U.S.P.Q.2d 1313, 1318 (Federal Circuit 2000) (italics added)). Here again, it is believed that there have been no such findings to establish that the features discussed above of the rejected claims are met by the reference relied upon. As referred to above, any review of the reference relied upon makes plain that it simply does not describe the features discussed above of the claims as now presented.

Thus, the proper evidence of obviousness must show why there is a suggestion as to the reference so as to provide the subject matter of the claimed subject matter and its benefits.

In short, there is no evidence that the reference relied upon, whether taken alone or otherwise, would provide the features of the claims discussed above. It is therefore respectfully submitted that the claims are allowable for these reasons.

As further regards all of the obviousness rejections of the claims, it is respectfully submitted that not even a *prima facie* case has been made in the present case for

obviousness, since the Office Actions to date never made any findings, such as, for example, regarding in any way whatsoever what a person having ordinary skill in the art would have been at the time the claimed subject matter of the present application was made. (See In re Rouffet, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998) (the “factual predicates underlying” a *prima facie* “obviousness determination include the scope and content of the prior art, the differences between the prior art and the claimed invention, and the level of ordinary skill in the art”)). It is respectfully submitted that the proper test for showing obviousness is what the “combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art”, and that the Patent Office must provide particular findings in this regard — the evidence for which does not include “broad conclusory statements standing alone”. (See In re Kotzab, 55 U.S.P.Q. 2d 1313, 1317 (Fed. Cir. 2000) (citing *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1618 (Fed. Cir. 1999) (obviousness rejections reversed where no findings were made “concerning the identification of the relevant art”, the “level of ordinary skill in the art” or “the nature of the problem to be solved”))). It is respectfully submitted that there has been no such showings by the Office Actions to date or by the Advisory Action.

In fact, the present lack of any of the required factual findings forces both Appellant and this Board to resort to unwarranted speculation to ascertain exactly what facts underly the present obviousness rejections. The law mandates that the allocation of the proof burdens requires that the Patent Office provide the factual basis for rejecting a patent application under 35 U.S.C. § 103. (See In re Piasecki, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984) (citing *In re Warner*, 379 F.2d 1011, 1016, 154 U.S.P.Q. 173, 177 (C.C.P.A. 1967))). In short, the Examiner bears the initial burden of presenting a proper *prima facie* unpatentability case — which has not been met in the present case. (See In re Oetiker, 977 F.2d 1443, 1445, 24, U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992)).

For at least the foregoing reasons, it is submitted that neither Ghanime nor Levi, alone or combined, renders claim 1 obvious.

Similar arguments apply to claims 9, 11, 13 and 15. Each of claims 4 to 8, 10, 12, 14 and 16, depend from one of claims 1, 9, 11, 13 and 15; accordingly, the same arguments apply to these claims as well.

In view of the foregoing, reversal of the obviousness rejections of claims 1 and 4 to 16 is respectfully requested.

B. Claims 2 and 3 are not obvious over Ghanime in view of Levi and Kuwabara

Claims 2 and 3 stand rejected under 35 U.S.C. § 103 as being obvious over Ghanime in view of Levi and U.S. Patent No. 6,065,136 to Kuwabara (“Kuwabara”). It is respectfully submitted that neither claim 2 nor claim 3 is obvious over Ghanime in view of Levi and Kuwabara, for at least the following reasons.

As an initial matter, claims 2 and 3 depend from claim 1. Accordingly, the arguments presented above in connection with claim 1 apply equally to claims 2 and 3 since Kuwabara does not cure the deficiencies of Ghanime and Levi.

Moreover, claim 2 recites that the e-mail has a file attached to it. As regards the asserted disclosure of this feature, the Final Office Action relies on col. 5, lines 15 to 18 and 20 to 23 of the Kuwabara reference. Respectfully, these sections of the Kuwabara reference do not describe a file attached to an email, but instead merely state that the information stored in the diagnostic data memory, as well as the trouble and image data from image memory 14g, are to be stored in e-mail memory 14c. Respectfully, it appears that the information in e-mail memory 14c is provided in the body of an e-mail message. In particular, it appears that a special diagnostic program is used to read this information when the email message is retrieved. See, e.g., col. 5, lines 42 to 46.

In view of the foregoing, reversal of the obviousness rejections of claims 2 and 3 is respectfully requested.



9. **CONCLUSION**

In view of the above, it is respectfully requested that the rejections of claims 1 to 16 be reversed, and that these claims be allowed as presented.

Respectfully submitted,

Dated: 1 Feb 2006

By:


Michelle Carino

Richard L. Mayer
Reg. No. 22,490

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APPENDIX

1. An industrial controller for a machine tool, a robot and/or a production machine, comprising:

a converter which associates predefined operating states, of the machine tool, robot and/or production machine, on an individual operating-state basis to respective messages and/or alarms so that, if one of the predefined operating states is present, an SMS message and/or an e-mail about the one of the predefined operating states is sent to a predefined distribution group; and

a table which associates each of the predefined operating states with: i) a respective distribution group to whom the SMS message and/or email message is to be sent, and ii) information identifying particular information to be included in the SMS message and/or email message,

wherein after one of the predefined operating states is detected, the respective message and/or alarm associated with the one of the predefined operating states is sent via the SMS message and/or e-mail to the respective distribution group associated with the detected predefined operating state, the respective message and/or alarm including the particular information identified by the information associated with the detected predefined operating state.

2. The controller according to claim 1, wherein the e-mail has a file attached to it.

3. The controller according to claim 2, wherein the file is a trace file, the trace file including an operating sequence preceding the messages and/or alarms.

4. The controller according to claim 1, further comprising:

an operating keyboard to effect the association by editing.

5. The controller according to claim 1, wherein the converter is configured to initiate a bit poll, the bit poll for polling at least one system component for operation state information.

6. The controller according to claim 1, wherein the SMS message and/or the e-mail about the one of the predefined operating state is sent to the predefined distribution group when the one of the predefined operating states arises.

7. The controller according to claim 1, wherein each respective distribution group includes at least one person and/or site.

8. The controller according to claim 1, wherein the table associates at least two of the predefined operating states with a different respective distribution group.

9. An industrial controller for a machine tool, a robot and/or a production machine, comprising:

a converter which associates predefined operating states of the machine tool, robot and/or production machine, on an individual operating-state basis to respective messages and/or alarms;

a table which associates each of the predefined operating states with: i) a respective distribution group to whom an SMS message and/or email message is to be sent, and ii) information identifying particular information to be included in the SMS message and/or email message; and

a transmitter configured to send the message and/or alarm associated with one of the predefined operating states after the one of the predefined operating states is detected, the message and/or alarm being sent via the SMS message and/or email message to the respective distribution group associated with the detected predefined operating state, the respective message and/or alarm including the particular information identified by the information associated with the detected predefined operating state.

10. The controller according to claim 9, wherein the table associates at least two of the predefined operating states with a different respective distribution group.

11. An industrial controller for a machine tool, a robot and/or a production machine, comprising:

a converter which associates predefined operating states of the machine tool, robot and/or production machine, on an individual operating-state basis to respective messages and/or alarms;

a table which associates each of the predefined operating states with: i) a respective distribution group to whom an SMS message is to be sent, and ii) information identifying particular information to be included in the SMS message; and

a transmitter configured to send the message and/or alarm associated with one of the predefined operating states after the one of the predefined operating states is detected, the message and/or alarm being sent via the SMS message to the respective distribution group associated with the detected predefined operating state, the respective message and/or alarm including the particular information identified by the information associated with the detected predefined operating state.

12. The controller according to claim 11, wherein the table associates at least two of the predefined operating states with a different respective distribution group.

13. An industrial controller for a machine tool, a robot and/or a production machine, comprising:

a converter which associates predefined operating states of the machine tool, robot and/or production machine, on an individual operating-state basis to respective messages and/or alarms;

a table which associates each of the predefined operating states with a respective distribution group to whom an SMS message and/or email message is to be sent; and

a transmitter configured to send the message and/or alarm associated with one of the predefined operating states after the one of the predefined operating states is detected, the message and/or alarm being sent via the SMS message and/or email message to respective distribution group associated with the detected predefined operating state.

14. The controller according to claim 13, wherein the table associates at least two of the predefined operating states with a different respective distribution group.

15. An industrial controller for a machine tool, a robot and/or a production machine, comprising:

a converter which associates predefined operating states of the machine tool, robot and/or production machine, on an individual operating-state basis to respective messages and/or alarms;

a table which associates each of the predefined operating states with a respective distribution group to whom an SMS message is to be sent; and

a transmitter configured to send the message and/or alarm associated with one of the predefined operating states after the one of the predefined operating states is detected, the message and/or alarm being sent via the SMS message to the respective distribution group associated with the detected predefined operating state.

16. The controller according to claim 15, wherein the table associates at least two of the predefined operating states with a different respective distribution group.

EVIDENCE APPENDIX

No evidence has been submitted pursuant to 37 C.F.R. §§1.130, 1.131, or 1.132. No other evidence has been entered by the Examiner or relied upon by Appellant in the appeal.

RELATED PROCEEDINGS APPENDIX

As indicated above in Section 2 of this Appeal Brief, “[t]here are no other prior or pending appeals, interferences or judicial proceedings known by the undersigned, or believed by the undersigned to be known to Appellant or the assignee, Siemens AG, ‘which may be related to, directly affect or be directly affected by or have a bearing on the Board’s decision in the pending appeal.’ ” As such, there no “decisions rendered by a court or the Board in any proceeding identified pursuant to [37 C.F.R. § 41.37(c)(1)(ii)]” to be submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:

Rainer BARTH

For: INDUSTRIAL CONTROLS
 FOR MACHINE TOOLS AND/OR
 PRODUCTION MACHINES

Filed: September 19, 2000

Serial No.: 09/664,948


Examiner: Victor D. Lesniewski

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Date: 1 Feb 06

Signature: 

Michelle Carniaux (Reg. No. 36,098)

APPEAL BRIEF TRANSMITTAL

SIR:

Transmitted herewith for filing in the above-identified patent application please find an Appeal Brief pursuant to 37 C.F.R. § 41.37 in triplicate.

Please charge the Appeal Brief fee of \$500.00, and any other fees that may be required in connection with this communication to the deposit account of **Kenyon & Kenyon**, deposit account number **11-0600**.

Applicant hereby requests a two-month extension of time for submitting the Appeal Brief. The extended period for submitting the Appeal Brief expires on February 27, 2006. Please charge the \$450.00 extension fee and any other fee that may be required to Deposit Account No. 11-0600. A duplicate of this Transmittal is enclosed

Respectfully submitted,

By: 

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Dated: 1 Feb 06

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